

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JAN VALLEJO, Individually and As
Personal Representative of Steve
Vallejo,

8:14-CV-50

Plaintiff,

vs.

AMGEN, INC., WYETH, INC., and
PFIZER, INC.,

ORDER

Defendants.

This matter is before the Court on the plaintiff's objection to the Magistrate Judge's August 11, 2016 Order (filing 115) denying the plaintiff's motion to compel discovery. After reviewing the record, the Court finds that the Magistrate Judge's Order was not clearly erroneous or contrary to law. *Fed. R. Civ. P. 72(a)*; *see 28 U.S.C. § 636(b)(1)(A)*. Accordingly, the plaintiff's objection is overruled.

The defendants have requested sanctions against the plaintiff's counsel for alleged abuses of the discovery process (filing 120 at 27). But the defendants have not provided the Court with evidence establishing the expenses that they say they should be reimbursed for as a sanction. The Court will grant the defendants until October 12, 2016 to file a separate motion for sanctions, supported by documentation of their costs and fees.

The plaintiff has filed a motion to strike that request under *Fed. R. Civ. P. 12(f)* (filing 122). But Rule 12(f) only applies to motions to strike material from a "pleading," i.e., a complaint or an answer. *See, id.*; *Fed. R. Civ. P. 7(a)*; *Mecklenburg Farm v. Anheuser-Busch, Inc.*, 250 F.R.D. 414, 419 (E.D. Mo. 2008); *Big Stone Broad., Inc. v. Lindblom*, 161 F. Supp. 2d 1009, 1013 (D.S.D. 2001); *VanDanacker v. Main Motor Sales Co.*, 109 F. Supp. 2d 1045, 1047 (D. Minn. 2000). Motions, briefs, memoranda, objections, or affidavits are not to be attacked by a motion to strike. *See, e.g., Hagen v. Siouxland Obstetrics & Gynecology, P.C.*, 934 F. Supp. 2d 1026, 1042 (N.D. Iowa 2013); *All Energy Corp. v. Energetix, LLC*, 985 F. Supp. 2d 974, 984 (S.D. Iowa 2012); *Mecklenburg Farm*, 250 F.R.D. at 420 n.7. Opposition to a motion can be accomplished simply by opposing the motion. It is a waste of everyone's time when one motion metastasizes into two or three. *See Infogroup, Inc. v.*

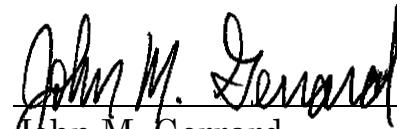
DatabaseLLC, 95 F. Supp. 3d 1170, 1194 (D. Neb. 2015). So, the motion to strike is improper and will be denied.

IT IS ORDERED:

1. The plaintiff's objection to the Magistrate Judge's August 11, 2016 Order on discovery (filing 116) is overruled.
2. The plaintiff's motion to strike the defendants' request for sanctions (filing 122) is denied.
3. The defendants' motion for sanctions, if any, shall be filed on or before October 12, 2016.

Dated this 29th day of September, 2016.

BY THE COURT:



John M. Gerrard
United States District Judge